

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WALANDO KENNEY,

Petitioner,

v.

Civil Action No. 1:19-CV-19
(Kleeh)

FREDERICK ENTZEL, Warden,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 22],
GRANTING RESPONDENT'S MOTION TO DISMISS OR MOTION FOR SUMMARY
JUDGMENT [DKT. NO. 17], AND DISMISSING PETITION [DKT. NO. 1]**

On February 7, 2019, pro se Petitioner, Walando Kenney ("Petitioner"), an inmate at FCI Hazelton in Bruceton Mills, West Virginia, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 [Dkt. No. 1]. The petition challenges the Bureau of Prison's ("BOP") calculation of Petitioner's sentence and, in particular, his pre-trial detention time during which he alleges he was in the primary custody of federal officials [Id.]. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred this matter to United States Magistrate Judge Michael J. Aloï ("Magistrate Judge") for initial screening and a report and recommendation.

On June 3, 2019, the Respondent filed a *Motion to Dismiss or for Summary Judgment* [Dkt. No. 17]. On June 4, 2019, a Roseboro Notice was issued to pro se Petitioner, advising him of his right

to respond to Respondent's motion [Dkt. No. 19]. On January 21, 2020, the Magistrate Judge issued a Report and Recommendation ("R&R") [Dkt. No. 22] recommending that Respondent's *Motion to Dismiss or Motion for Summary Judgment* [Dkt. No. 17], be granted. The R&R further recommends that the petition be dismissed with prejudice [Dkt. No. 22 at 16].

The R&R specifically warned that the parties had "fourteen days from the date of service of this Report and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection" [Dkt. No. 22 at 16]. The R&R stated that the failure to file written objections would constitute a waiver of appellate review by the Circuit Court of Appeals [Id.]. It further explained that the failure to file written objections also relieves the Court of any obligation to conduct a de novo review of the issue presented [Id.]. See Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The R&R was issued on January 21, 2020, and mailed to Petitioner, via certified mail, on that same date [Dkt. No. 22-1]. Service of the R&R was accepted on January 23, 2020 [Dkt. No. 23]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review

de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety. The Court **ORDERS** that:

- 1) Respondent's *Motion to Dismiss or for Summary Judgment* [Dkt. No. 17] is **GRANTED**;
- 2) The § 2241 Petition for writ of habeas corpus [Dkt. No. 1] is **DISMISSED WITH PREJUDICE**; and
- 3) The Clerk of Court is **DIRECTED** to **STRIKE** this matter from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies

of both orders to counsel of record and to the pro se Petitioner,
certified mail, return receipt requested.

DATED: February 19, 2020

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE